

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

I.A. No. 6536 of 2024

In

Company Appeal (AT) (Insolvency) No. 1791 of 2024

[Arising out of the Order dated February 02, 2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Principal Bench, New Delhi) in CP (IB) No. 1059/(PB)/2020]

IN THE MATTER OF:

Satvir Singh Gulia

S/o Sh. Om Prakash
R/o H.No. 8A, Namak Piao
Najafgarh, New Delhi - 110043
Email: captsatvir@gmail.com

...Appellant

Versus

M/s Emaar India Limited

(CIN: U45201DL2005PLC133161
Having Registered Office at:
306-308, Square One, C-2
District Centre, Saket
New Delhi - 110017
Email: bharat.garg@emaar.ae

...Respondent

Present:

For Appellant : Mr. Manish Kumar Shekhari, Ms. Anisha Mahajan, Advocates.

For Respondent : Ms. Pooja Mahajan, Mr. Savar Mahajan, Mr. Srivatsava Reddy Beerapalli, Advocates

ORDER
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal has been filed by Capt Satvir Singh Gulia (Appellant/Operational Creditor) under Section 61(1) of the Insolvency and Bankruptcy Code, 2016 (IBC), against the Order dated 02.02.2024 passed by the Hon'ble 'Adjudicating Authority' (National Company Law Tribunal, Principal Bench, New Delhi) in CP (IB) No. 1059/(PB)/2020.

2. Before proceeding into the Appeal, we look into the Application under Rule 31 read with Rule 11 of the National Company Law Appellate Tribunal Rules, 2016, for condonation of delay of 170 days in refiling the present Appeal vide IA No. 6536 of 2024. The explanation for the delay in refiling is at paragraph 3 and 4 page 2 of the I.A. and is reproduced herein under:

“....

3) The Appellant has filed the instant Appeal within statutory period of 30 days. The Impugned Order was passed on 02.02.2024. The Certified Copy was applied on 20.02.2024 and the same was prepared on 27.02.2024. The Appeal was filed through E-Portal on 11.03.2024.

4) The Appeal was scrutinized on 19.03.2024 and lot of defects were marked. The Appellant Advocate clerk has misplaced pages of appeal while filling it and such the defect was marked that Appeal is not in accordance with NCLAT form. The Appellant advocate could not cure the defect and re-file it within time due to his personal difficulty and engagement in his Roka Ceremony in April 2024 thereafter preparation and his Marriage on 15th July 2024, Mother major surgery at AIIMS in August and House Shifting from Jaypee Kosmos to NRI Residency.”

(emphasis supplied)

3. Per contra, the condonation of delay, has been strongly opposed by the Respondent which claims that there is no sufficient cause to explain the refiling delay. Respondent contends that this the Section 9 Application even before Hon'ble NCLT was kept pending for a long time. The Respondent in his Reply to the I.A. has opposed, as per paragraphs 27-36 which is reproduced as under:

“....

27. It is submitted that the reasons for the delay are completely personal and irrelevant to decide the present application. It is clear

from the above that the Appellant has not been vigilant in prosecuting the Appeal which was filed in March 2024 and refiled in September 2024 with a huge delay of 170 days. Reliance is placed on Ram Ratan Modi (Resolution Professional of Duncans Industries Ltd.) v Dail Consultants Ltd. & Ors., L.A. No. 4180 & 4510 of 2024 in Company Appeal (AT) (Insolvency) No. 1264 of 2024, where this Hon'ble Appellate Tribunal has held that:

"5. When we look into the explanation given by the Appellant, it is clear that Appellant has not been vigilant in prosecuting the Appeal which was filed as earlier in August 2023 and refiled on May 2024 with huge delay of 278 days, the explanation given in the Application are not sufficient to condone the inordinate delay of 278 days. In the IBC Proceedings litigant who are negligent in prosecuting the proceedings cannot be given any indulgence especially when the Appeal was filed by the RP who is well aware the importance of the timelines and necessarily of conclusion of all proceedings in a timeline

6. Counsel for the Respondent further submitted that RP was litigating in various forums in different Appeals and before the Adjudicating Authority and he has been clearly negligent in prosecuting the Appeal.

We thus are of the view that no sufficient ground has been made out for condonation of 278 days delay in refiling. Refiling delay Application is rejected. Consequently, other IAs as well as the Memo of Appeal is also rejected."

28. It is most respectfully submitted that apart from citing some personal reasons, the counsel of the Applicant has failed to establish that the delay in refiling of the appeal is with a sufficient cause. In this regard reliance is placed on Basawaraj and Anr. v. Special Land Acquisition Officer, (2013) 14 SCC 81 where the Hon'ble Supreme Court has held that "15. *The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as*

to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature...."

29. Attention is also drawn to a recent judgment of the Hon'ble Supreme Court in Pathapati Subba Reddy & Ors. v The Special Deputy Collector, 2024 SCC OnLine SC 513, where it was reiterated that "... Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence..."

30. It is submitted that the reasons cited by the Applicant do not inspire any confidence and appear to be mere excuses. For instance, a delay of 5 months on account of the engagement and marriage of the counsel cannot be justified. Similarly, while attendance for the mother's major surgery in August is justifiable, house shifting cannot be considered a justifiable reason for condoning the delay. It is also relevant to mention that no documents whatsoever have been attached by the Applicant to justify the reasons for the delay and only bald and casual statements have been made for justifying the huge delay of 170 days in refiling.

31. It is submitted that no reasoning has been provided by the counsel of the Applicant to justify why he could not undertake the refiling during the period when he was preparing for his engagement and marriage and subsequently during the house shifting. The counsel should also be put to strict proof as to whether during this 6-month period, he was undertaking other work including appearing and making filings in other matters/ cases and before other judicial forums.”

(emphasis supplied)

4. The Respondent has also relied upon few other judgments of this Hon’ble Tribunal wherein huge delays in refiling have not been condoned. Firstly, he relies on ***Ram Ratan Modi vs Dail Consultants Ltd and Ors*** in ***Company Appeal (AT) (Insolvency) No. 1264 of 2024 decided on 12.09.2024***, paragraphs 5 and 6, which are reproduced as under:

“....

5. When we look into the explanation given by the Appellant, it is clear that Appellant has not been vigilant in prosecuting the Appeal which was filed as earlier in August 2023 and refiled on May 2024 with huge delay of 278 days, the explanation given in the Application are not sufficient to condone the inordinate delay of 278 days. In the IBC Proceedings litigant who are negligent in prosecuting the proceedings cannot be given any indulgence especially when the Appeal was filed by the RP who is well aware the importance of the timelines and necessarily of conclusion of all proceedings in a timeline.”

6. Counsel for the Respondent further submitted that RP was litigating in various forums in different Appeals and before the Adjudicating Authority and he has been clearly negligent in prosecuting the Appeal.”

(emphasis supplied)

5. Respondent has also relied on ***ODAT GmbH vs CA Santanu Brahma and Anr in IA No. 7033 of 2024*** in ***Company Appeal (AT) (Insolvency) No. 1901 of 2024*** decided on 29.11.2024, paragraph 12; which again comes down heavily on refiling delay:

“....

12. Coming to our analysis, we have no doubts in our mind that delay in refiling can be condoned only when the Tribunal is satisfied that there are reasonable and cogent grounds for not refiling the appeal on time. While we agree that an application for condonation of refiling delay is a matter which is between the Applicant and the Bench in which the Respondent is not supposed to have any determinative say, nonetheless, we cannot be unmindful of the fact that the Bench is equally duty-bound to scrutinise the reasons for delay in refiling the petition and cannot allow any unexplained delay to pass muster. Though the rigours of condonation of delay in refiling are not as strict as condonation of delay in filing, we cannot be oblivious of the fact that IBC is a time bound process and no wanton delay can be permitted in IBC proceedings.”

(emphasis supplied)

6. Respondent also relies upon ***Adisri Commercial Pvt Ltd vs Reserve Bank of India and Anr in Company Appeal (AT) (Insolvency) No. 1293 of 2022*** decided in 21.12.2022, paragraph 18, which again doesn't tolerate condoning long refiling delays and is as under:

“....

18. Any question of delay condonation must go through deep and sufficient scrutiny in the context of the Code. The circumstances cited for condonation of delay in re-filing has to be in consonance with the aims and objects of the Code and not frustrate the scheme of the Code. The natural corollary that follows is that condonation of delay in re-filing is not available just for the asking. This Tribunal

needs to be fully satisfied that the delay was unavoidable and the applicant was consistently diligent in pursuing the matter. The question of condoning any delay in re-filing would have to be considered in the context of the plausible explanation given to show that the delay was on account of reasons beyond the control of the applicant and could not be avoided despite all possible efforts by the applicant.”

7. Learned Counsel for the Appellant, in his rejoinder, contends that the reason for delay in re-filing the Appeal was due to missing pages, summer vacation and due to personal reasons. It is contended that the delay in re-filing has to be considered from a different angle and view point as compared to condonation of delay in filing. The delay in re-filing is not subject to rigorous test which is usually applied for excusing a delay in filing. It is submitted that there was no malafide intention, negligent or casual approach.

8. The Appellant further relies upon the judgment of Hon’ble Delhi High Court in ***Dr. Narender Kumar Sharma and Ors. Vs. Maharana Pratap Education Centre and Another reported in 2018 SCC Del 13146***. The facts of the case are different in this case as herein the rights of the defendants to file the written statement was closed as 120 days prescribed in CPC for filing the written statement had expired. This judgment is of no help to the Appellant.

9. The Appellant also relies upon the judgments of this Hon’ble Appellate Tribunal wherein condonation of delay in re-filing has been condoned by this

Hon'ble Appellate Tribunal in ***Rajesh J Shah & Ors. Vs. Sanjay Kumar Agarwal & Ors. in Company Appeal (AT) (Insolvency) No. 1490 of 2024, Compliance Construction Contracts Pvt. Ltd. Vs. Rishabh Buildwell Pvt. Ltd. in in Company Appeal (AT) (Insolvency) No. 1108 of 2022, Maharashtra State Electricity Distribution Company Ltd. Vs. Uttam Galva Steels Ltd. & Ors. 2023 SCC OnLine NCLAT 699, Tecpro Systems Ltd. Vs. NTPC Ltd. 2023 SCC OnLine NCLAT 2221, Anish Agarwal Resolution Professional of Tayo Rolls Ltd. Vs. Orissa Metaliks Pvt. Ltd. 2022 SCC OnLine NCLAT 4591, Collector, Land Acquisition Anantnag and Anr. Vs. Ms. Katiji & Ors. (1987) 2 SCC 107, S.K. Viswambaran Vs. Koyakunju & Ors. (1987) 2 SCC 109.***

10. In the above cited judgments of this Tribunal, the facts are specific to that particular situation and are not similar to the case in hand. We do not find that these judgements are of any help to the Appellant.

11. In this case, the Appellant has taken about 170 days to cure the defects and finally refile the present appeal. The Appellant seeks condonation of delay on several grounds such as advocate's clerk had misplaced pages of appeal while filing it, personal difficulty in re-filing, engagement in roka ceremony of the advocate in April, 2024 and thereafter preparation of the marriage of the Advocate and thereafter major surgery of his mother in August and thereafter house shifting. These reasons do not inspire much confidence as they appear to be more of bald and casual statements without really justifying the huge delay of 170 days in re-filing. The IBC Code provides

for a very strict timeline for filing an appeal but the Appellant has not been vigilant in refiling the appeal. The Appellant has provided certain personal reasons but unable to show any 'sufficient cause' for the delay of 170 days. Therefore, we find that justification of delay is unjustified.

Orders:

12. In the above background, we find that the explanation for the delay is unjustified and we conclude that the Appellant has not been vigilant in prosecuting the proceedings. Therefore, in the facts and circumstances of the case the condonation of 170 days delay is not allowed. Accordingly, the memo of Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Arun Baroka]
Member (Technical)**

**New Delhi.
February 06, 2025.**

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